

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

*In the Matter of the Petition for Redetermination under the Sales and Use Tax Law of
LIFECARE SERVICES, INC.*

Appearances:

For Petitioner:

Joseph A. Vinatieri
Attorney at Law
Geoffrey C. Waters
Senior Vice President
Thomas Petty, M.D.

For Business Taxes

Appeals Review Section:

John Abbott
Supervising Staff Counsel

*For Sales and Use Tax
Department:*

Glenn Bystrom
for Robert Nunes
Deputy Director
Gary Jugum
Assistant Chief Counsel
John L. Waid
Counsel

MEMORANDUM OPINION

This opinion considers the merits of a petition for redetermination of sales tax, interest and penalty in the amount of \$642,264 which was heard and taken under consideration on October 2, 1992, in Sacramento, California. The Board further considered the matter and arrived at a decision on December 3, 1992.

Petitioner is a manufacturer that sells and rents medical respiratory equipment. Petitioner's respiratory equipment assists patients in breathing.

Petitioner sells/rents certain equipment that provides positive air pressure directly to the patient's breathing passage. Other equipment provides negative pressure to the patient's chest area which in turn causes an inrush of air to the lungs. The difference between the two types of systems is that, in the case of positive pressure, air/oxygen is forced into the patient's lungs, while in the negative pressure systems, air is removed from the area surrounding the chest cavity, causing a low pressure area around that cavity, thus allowing the relatively higher ambient pressure to introduce air into the patient's lungs. An example of this latter type of device is the iron lung. In addition to the iron lung, there are less cumbersome devices that operate on a similar principle and perform the same function. Specifically, the chest shell covers only the chest of the patient; the pulmo-wrap is a suit that is worn and covers the body of the patient. Other equipment sold/rented by the petitioner is mechanical in nature, but still uses air pressure

to operate. The exsufflation belt is worn just above the waist and, when expanded by pumping air into it, applies pressure below the diaphragm, forcing air out of the lungs, thus causing a low pressure in the lungs which results in air being moved into the lungs.

Parts of the equipment that are used in positive pressure devices are also used in the negative pressure devices. For instance, pumps and hoses can be used to provide positive pressure or create the vacuum necessary in the negative pressure devices dependent upon the application. In all cases, some part of the equipment is worn by the patient and some portion, such as a pump and regulator, is placed on a table or a cart nearby.

The principal issue raised by the petition was whether sales or use tax should apply to the sale or rental of respiratory equipment that provides a flow of air/oxygen to the patient through the application of negative pressure. Should those sales be allowed as exempt sales of oxygen delivery systems under Revenue and Taxation Code Section 6369.5?

The Board concluded that respiratory equipment that induces air into the lungs of a patient, through the application of pressure to the chest area, qualifies for the exemption as oxygen delivery systems as is provided for in Revenue and Taxation Code Section 6369.5, regardless of whether the pressure applied is negative pressure or positive pressure. Included in the granting of exemption were: the exsufflation belt, the iron lung, the chest shell, the pulmo wrap, and the pumps and regulators necessary for the operation of the listed equipment. On the other hand rocking beds were not included in the exemption.

A second issue was whether the respiratory equipment qualified as nontaxable prosthetic devices as defined in Sales and Use Tax Regulation 1591(b)(5). The Board concluded the respiratory equipment did not qualify for that exemption since the equipment was not designed to be fully worn on the person of the user.

The Board ordered the matter redetermined in accordance with this finding.

Done at Torrance, California, this 8th day of September, 1993.

Matthew K. Fong, Member

Ernest J. Dronenburg, Jr., Member

Windie Scott, Member

Attested by: Burton W. Oliver, Executive Director